

## Securities and Exchange Commission

## § 248.3

companies or about individuals who obtain financial products or services primarily for business, commercial, or agricultural purposes. This part applies to brokers, dealers, and investment companies, as well as to investment advisers that are registered with the Commission. It also applies to foreign (non-resident) brokers, dealers, investment companies and investment advisers that are registered with the Commission. These entities are referred to in this subpart as “you.” This subpart does not apply to foreign (non-resident) brokers, dealers, investment companies and investment advisers that are not registered with the Commission. Nothing in this subpart modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–1320d–8).

[65 FR 40362, June 29, 2000, as amended at 69 FR 71329, Dec. 8, 2004]

### § 248.2 Model privacy form: rule of construction.

(a) *Model privacy form.* Use of the model privacy form in appendix A to subpart A of this part, consistent with the instructions in appendix A to subpart A, constitutes compliance with the notice content requirements of §§ 248.6 and 248.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part provide guidance concerning the rule’s application in ordinary circumstances. The facts and circumstances of each individual situation, however, will determine whether compliance with an example, to the extent practicable, constitutes compliance with this part.

(c) *Substituted compliance with CFTC financial privacy rules by futures commission merchants and introducing brokers.* Except with respect to § 248.30(b), any futures commission merchant or introducing broker (as those terms are defined in the Commodity Exchange Act (7 U.S.C. 1, *et seq.*)) registered by notice with the Commission for the purpose of conducting business in security futures

products pursuant to section 15(b)(11)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)(A)) that is subject to and in compliance with the financial privacy rules of the Commodity Futures Trading Commission (17 CFR part 160) will be deemed to be in compliance with this part.

[74 FR 62984, Dec. 1, 2009]

### § 248.3 Definitions.

As used in this subpart, unless the context requires otherwise:

(a) *Affiliate* of a broker, dealer, or investment company, or an investment adviser registered with the Commission means any company that controls, is controlled by, or is under common control with the broker, dealer, or investment company, or investment adviser registered with the Commission. In addition, a broker, dealer, or investment company, or an investment adviser registered with the Commission will be deemed an affiliate of a company for purposes of this subpart if:

(1) That company is regulated under Title V of the GLBA by the Federal Trade Commission or by a Federal functional regulator other than the Commission; and

(2) Rules adopted by the Federal Trade Commission or another federal functional regulator under Title V of the GLBA treat the broker, dealer, or investment company, or investment adviser registered with the Commission as an affiliate of that company.

(b) *Broker* has the same meaning as in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)).

(c)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples*—(i) *Reasonably understandable.* You make your notice reasonably understandable if you:

(A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Use short explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;